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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Inmate Calling Services )  
Providers Task Force's Petition ) RM-8181  
for Declaratory Ruling )

COMMENTS OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

The Southern New England Telephone Company (SNET), pursuant to the Federal Communications Commission's (Commission's) Public Notice (DA 93-137) released February 9, 1993, hereby files comments in this proceeding.

I. INTRODUCTION AND SUMMARY

On February 2, 1993, the Inmate Calling Services Providers Task Force (ICSPTF) of the American Public Communications Council filed with the Commission a Petition for Declaratory Ruling (Petition) requesting that the Commission rule that specialized phones for inmate-only services offered by the Local Exchange Carriers (LECs) are Customer Premises Equipment (CPE), and that certain of the specialized inmate-only services offered by the LECs are enhanced services for regulatory purposes.

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SNET contends that ICSPTF's Petition should be denied because it fails to show that the telephones and systems used by LECs for inmate calling are CPE under the Computer II rules. Further, SNET believes that the Commission's 1985 decision in the Petition for Declaratory Ruling of Tonka Tools, Inc. and Southern Merchandise Corp. (Tonka) Regarding American Telephone and Telegraph Provision of Coinless Pay Telephones is controlling.<sup>1</sup> In that decision, the Commission clearly found that the provision of coin and coinless public telephones provided by the BOCs and AT&T do not constitute CPE but are part of a communications service that remains subject to regulation.

II. The Tonka Decision Requires that ICSPTF's Petition Be Denied.

The Commission's Decision in Tonka specifically found that coinless pay telephones do not constitute CPE under the rules of Computer II and are subject to regulation under Title II of The Communications Act. The Decision states, "we concluded that the Computer II pay telephone exclusion encompasses both the traditional and more recent coin and coinless pay telephones provided by the BOCs and AT&T, as described above, and accordingly, that these devices do not constitute CPE for purposes of Computer II. As to these customers or users the telephone instrument and line are

<sup>1</sup> See Memorandum Opinion and Order, FCC 85-269, released May 22, 1985.

necessarily integrated. The instrument and the pay telephone service are not severable from that customer's perspective."

ICSPTF fails to adequately distinguish inmate-only phones from coinless pay telephones as identified in Tonka, and therefore, its petition should be denied.

III. Inmate-Only Telephones Fall Within the Definition of The General Public Under Tonka.

Correctional facilities have been entrusted by the federal and state governments with the responsibility of ensuring that the appropriate safeguards and protection are taken to prevent further criminal activity by the inmates housed in these facilities. It cannot be business as usual for these residents during their stay. The administration of these institutions require telephone service with limited calling capabilities to ensure effective and efficient service and protection of the public outside these facilities.

In the Memorandum Opinion & Order for Tonka, the Commission has concluded that "the primary customer of this telephone equipment [semi-public pay telephone location] for Computer II regulatory purposes is still the general public or some segment thereof. For inmate-only telephones the persons incarcerated in the correctional institution represents the primary customer. Therefore, inmate-only

telephones fall within the definition of the general public under Tonka.

IV. State Law Prohibits Customer-Owned, Coin-Operated Telephones.

Currently, in the State of Connecticut, there are no provisions for customer-owned, coin-operated telephones (COCTS). State regulations prohibit the interconnection, use and features of COCTS.<sup>2</sup>

Further, SNET currently provides only end-to-end network service to its correctional facilities. There are no "enhanced inmate services" provided at this time in this state.

In Tonka, the Commission has recognized that the states have legitimate interests in the provision of coin and coinless pay telephone service. SNET believes that the Commission must continue to recognize those interests and, therefore, must deny ICSPTF's petition as being incompatible with state regulation of payphone and inmate-only services.

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<sup>2</sup> See Memorandum Opinion and Order, FCC 85-222, released May 6, 1985. This Order denies the Petition filed by Universal Payphone Corporation that state restrictions do not violate the Commission's policies concerning interconnection of COCTs to the public switched network provided they are interpreted and enforced consistent with this Memorandum Opinion and Order.

V. The Specialized Functionality Associated With Inmate-Only Phones Does not Make Them CPE

While Petitioners attempt to distinguish inmate-only telephones from the coin and coinless telephones identified in Tonka, its arguments fail to hit the mark. Petitioners contend that the specialized functionality of inmate-only phones makes them CPE.<sup>3</sup> Tonka makes no such statement. Tonka specifically holds that the pay telephone exclusion is not limited to the traditional type of coin telephone that were activated and controlled through the telephone company's central office, that it does not rest upon considerations of technical severability alone,<sup>4</sup> and that the BOCs' pay telephone devices constitute an offering to the public of a communications service. The Commission goes on to state that:

"we conclude that the Computer II pay telephone exclusion encompasses both the traditional and more recent coin and coinless pay telephones provided by the BOCs and AT&T, . . . that these devices do not constitute CPE for purposes of Computer II."

The Commission has recognized that public telephones constitute the offering to the public of a communications service -- a service where the equipment and transmission

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<sup>3</sup> Petition at p. 14.

<sup>4</sup> Tonka at p. 13.

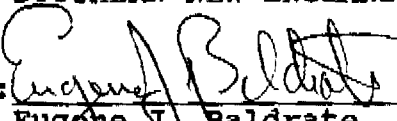
are not "logically severable."<sup>5</sup> Given the sound reasoning in Tonka, and petitioner's failure to provide any rational basis to distinguish inmate-only telephones from other public payphones, the Commission should deny their petition and find that inmate-only telephones are not CPE.

VI. Conclusion

For the foregoing reasons, the Commission should reject the ICSPTF Petition and retain its regulatory policy for the inmate payphones provided by local exchange carriers.

Respectfully submitted,

SOUTHERN NEW ENGLAND TELEPHONE

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March 8, 1993

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<sup>5</sup> Tonka at p. 13.

CERTIFICATE OF SERVICE

I, Barbara Majeski, do certify that on March 8, 1993, copies of the foregoing Comments to the Petition for Declaratory Ruling filed by Inmate Calling Services Providers Task Force, were deposited in the U.S. Mail, first-class, postage prepaid to the party shown below.

  
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